



2026:AHC:64076-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 1834 of 2026

Mursalin And 3 Others

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Ankit Srivastava, Ch. Dil Nisar
Counsel for Respondent(s)	:	G.A.

Court No. - 49

**HON'BLE RAJEEV MISRA, J.
HON'BLE ACHAL SACHDEV, J.**

1. Heard Mr. Anurag Kumar Chaurasia, Advocate holding brief of Mr. Ch. Dil Nisar, the learned counsel for petitioners and the learned A.G.A. representing State/ respondents 1, 2 and 3.

2. Perused the record.

3. Challenge in these writ petition is to the impugned FIR dated 13.12.2025 lodged by first informant-respondent-4 Abhilash Chaubey, Mines Inspector posted at Mining Department, District Magistrate Office, Saharanpur and registered as Case Crime No. 635 of 2025, under Sections 318 (3), 338, 336 (3), 340 (2) BNS, Section 3 (2) Prevention of Damage to Public Property Act and Section of the Mines and Minerals (Development and Regulation) Act, 1957, Police Station-Behat, District-Saharanpur.

4. Learned counsel for petitioners contends that petitioners are innocent. They have been falsely implicated in above mentioned case crime number. It is then contended that allegations made in the impugned F.I.R. are false and concocted. It is lastly contended that by virtue of the provisions contained in Section 22 of the Mines and Minerals (Regulation and Development) Act 1957, no F.I.R can be lodged for any offence under the Mines and Mineral (Regulation and Development) Act. 1957. On the above premise, the learned counsel for petitioners submit that proper course for the first informant-respondent-4 was to file a complaint. They, therefore, submit that since no bifurcation of the criminality alleged to have been committed by petitioners can be made

therefore the impugned F.I.R. is liable to be quashed by this Court.

5. Per Contra, the learned A.G.A. representing State/respondents 1 to 3 has vehemently opposed present writ petition. He submits that since upon perusal of impugned F.I.R. commission of a cognizable offence is clearly disclosed, therefore, no interference is warranted by this Court in present writ petition. Learned A.G.A. has then taken the Court to the impugned F.I.R. and on basis thereof he contends that some of the petitioners who are owners of the Vehicles, the registration number of vehicle are mentioned in the F.I.R. are indulging in organized crime. It is also apparent from allegations made in the F.I.R. that the owners and drivers of vehicles whose registration number are mentioned in the F.I.R. are guilty of transporting mines mineral. Since the F.I.R. is not an encyclopedia of the prosecution case vide:-

(i) Manoj and others Vs. State of Maharashtra, (1999) 4 SCC 268.

(ii) Subhash Kumar Vs. State of Uttarakhand, (2009) 6 SCC 641.

(iii) Achhar Singh Vs. State of M. P., (2021) 5SCC 543

therefore, at this stage only a prima-facie case is to be seen. In view of the allegations made in the F.I.R. no inference regarding innocence of petitioners can be drawn either with reference to the pleadings raised in present writ petition or the submissions urged by the learned counsel for petitioners. Allegations made in the F.I.R. are prima facie worthy of being investigated as they generate grave suspicion against petitioners. He would thus submit that present writ petition is therefore liable to be dismissed by this Court.

6. Before proceeding to consider the rival submissions, it is necessary to reproduce Section 22 of The Mines and Minerals (Regulation and Development) Act 1957 as learned counsel for petitioners have heavily relied upon the same. It reads as under:

"22. Cognizance of offences- No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."

7. Admittedly, The Mines and Minerals (Regulation and Development) Act 1957 is a special Act. Section 22 of aforesaid Act clearly provides that in respect of any offence punishable under the Act or any rules made thereunder, no court shall take cognizance except upon complaint made in writing by a person authorized in this behalf by Central Government or the State Government.

8. It is thus evident that Section 22 of The Mines and Minerals (Regulation and Development) Act 1957 carves out an exception with regard to the procedure regarding prosecution of an accused who has committed an offence punishable under The Mines and Minerals (Regulation and Development) Act 1957 or the Rules framed thereunder.

9. Nature and Scope of Section 22 of Act, 1952 and its impact upon criminal proceedings launched by means of an F.I.R. for alleged offences under The Mines and Minerals (Regulation and Department) Act, 1957 and the rules framed thereunder, as well as consequential proceedings before court, after cognizance is taken by court concerned upon charge-sheet, whereby an accused has been charge-sheeted for an offence punishable under Indian Penal Code as well as The Mines and Minerals (Regulation and Development) Act, 1957 and the Rules framed thereunder came up for consideration before Apex Court for the first time in **State (NCT of DELHI) Vs. Sanjay (2014) 9 SCC 772**. The Apex Court after evaluating the entire gamut of case-law relating to the issue involved therein as well as relevant provisions of Cr.P.C. and The Mines and Minerals (Regulation and Development) Act, 1957 held as follows in paragraphs 69, 70, 71, 72 and 73 of the report:-

"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the

ground water levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

72. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the

Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190 (1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-À-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the concerned Magistrates to proceed accordingly."

10. Thereafter, the Apex Court in the case of **Kanwar Pal Singh Vs. State of U.P. and another (2020) 14 SCC 331**, again considered the issue as noted above with reference to the judgement in State (NCT OF DELHI) (Supra) and held as follows in paragraphs, 15 and 16 of the judgement-

" 15. We would again advert to the decision in Sanjay (supra) which had overruled the decision of the Calcutta High Court in Seema Sarkar v. State¹⁷ wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge-sheet submitted by the police under Section 21(2) of the Mines Regulation Act and Section 379 of the IPC, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint was not made in terms of Section 22 of the Mines Regulation Act, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court which had directed that the FIR should not be treated as registered under Section 379 of the IPC but only under Section 21 of the Mines Regulation Act. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in Sanjay

(supra) after referring to Section 26 of the General Clauses Act and the meaning of the expression 'same offence', to observe that the offence under Section 21 read with Section 4 of the Mines Regulation Act and Section 379 of the IPC are different and distinct. The aforesaid reasoning compels us to reject the contention of the appellant that the action as impugned in the FIR (1995) 1 Cal LT 95 is a mere violation of Section 4 which is an offence cognizable only under Section 21 of the Mines Regulation Act and not under any other law. There is no bar on the Court from taking cognizance of the offence under Section 379 of the IPC. We would also observe that the violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the Mines Regulation Act, unlike Section 13(3)(iv) of the TOHO Act.

16. In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 of the IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the Mines Regulation Act will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 of the IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. There would be no order as to costs."

11. Thereafter the controversy with regard to the effect of Section 22 of The Mines and Minerals (Regulation and Development) Act, 1957 on a State case which comes into existence upon a police report again came up for consideration by Apex Court in **Jayant and others Vs. State of Madhya Pradesh (2021) 2 SCC 670**, wherein court in paragraphs 21, 21.1, 21.2, 21.3, 21.4, 21.5 and 22 of the report observed as under:-

"21. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-à-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove,

our conclusions are as under:

21.1. That the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

21.2. The bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

21.3. For commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder.

21.4. That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

21.5. In a case where the violator is permitted to compound the offences on payment of penalty as per sub section 1 of Section 23A, considering sub section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or

any rule made thereunder so compounded.

22. However, the bar under sub section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further."

12. A learned Single Judge of this Court in **Imran and others Vs. State of U.P. and another 2019 SCC Online All. 4542**, after taking into consideration the case-law on the issue as noted above and also relevant provisions of the relevant Act and Cr. P.C. concluded as follows in paragraphs 42, 43 and 44:-

"42. In view of above, this Court is of the view that so far the cognizance taken by the Judicial Magistrate concerned on the impugned charge-sheet dated 14.04.2018 for the offences under the Indian Penal Code is concerned, it cannot be said to be illegal and without authority, but so far as the cognizance taken for the offence under the Mines and Minerals (Development and Regulation) Act on the impugned charge-sheet dated 14.04.2018 is concerned, the same is not liable to be sustained in the eyes of law on account of categorical bar contained in Section 22 of the the Mines and Minerals (Development and Regulation) Act 1957.

43. Accordingly further proceeding of criminal case no. 1520 of 2018 pursuant to impugned charge-sheet dated 14.04.2018 arising out of case no. 461 of 2017 so far as offence under section 4/21 of the Mines and Minerals (Development and Regulation) Act 1957 only is hereby quashed with liberty to the prosecution /officer concerned to file complaint against the applicants under the Mines and Minerals (Development and Regulation) Act 1957.

44. It is made clear that so far as order taking cognizance under Sections 147, 148, 149, 336, 353, 307, and 379 under Indian Penal Code are concerned, that has not been interfered by this Court and the concerned court below is at liberty to proceed in accordance with law against the applicants pursuant to charge-sheet dated 14.04.2018. "

13. Thus on a conjoint reading of law laid down by Courts as noted herein above, it is evident that concerned court cannot take cognizance of an offence punishable under the Mines and Mineral (Regulation and Development)(Act, 1957 or the Rules framed thereunder except on a complaint made by an authorized officer in that behalf to the court

concerned.

14. What would be the situation in a case, whereupon submission of a charge sheet against an accused, whereby and whereunder, he has been charge-sheeted for an offence punishable under I.P.C. as well as The Mines and Minerals (Regulation and Development) Act, 1957 and the Rules framed thereunder and court concerned has taken cognizance and proceeded with the matter as a State case is no longer res-integra and stands settled by following observations made in paragraph 21.4 of the judgement in **(Jayant Vs. State of M.P.) (supra)** :-

"21.4. That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate."

15. In view of aforesaid observation made by the Apex Court, it is apparent that an F.I.R. in respect of an offence under the I.P.C./B.N.S. etc. can be maintained. However, in respect of an offence under the Mines and Mineral (Regulation and Development) Act, 1957, only a complaint shall lie. The same can be harmonized by the court concerned. As such, the impugned F.I.R. in so far as it implicates the petitioners for an offence under Sections 4/21 of the Mines and Mineral (Regulation and Development) Act, 1957 is clearly unsustainable in law.

16. In view of the discussion made above, the present writ petition succeeds and is liable to be allowed in part.

17. It is, accordingly, partly **allowed**.

18. The impugned FIR dated 13.12.2025 lodged by first informant-respondent-4 Abhilash Chaubey, Mines Inspector posted at Mining Department, District Magistrate Office, Saharanpur and registered as Case Crime No. 635 of 2025, shall stand quashed in so far as it relates to Section 4/21 of the Mines and Mineral (Regulation and Development) Act, 1957. However, the remaining part of the F.I.R is sustained.

19. In the facts and circumstances of the case, the parties shall bear their own cost.

(Achal Sachdev,J.) (Rajeev Misra,J.)

March 26, 2026

YK